

REMARKS

This paper is responsive to the Office Action dated October 06, 2009 wherein claims 27-68 were rejected and claims 1-26 stand withdrawn pursuant to a requirement for restriction/election. By this paper, claims 27 and 47 have been amended. No new matter has been added. Claims 27-68 remain pending in this application. In view of the following remarks, Applicants request further examination and reconsideration of the present patent application.

35 USC 102

The Examiner has rejected claims 27-33, 36-39, 47-51, 55-59, 67 and 68 under 35 USC §102(e), as being anticipated by Catan, US Pub. No. 2002/0143643.

Independent claims 27 and 47 have been amended to recite "asset operating and asset shipping conditions." Support for the amendments can be found in Applicants' specification at, for example paragraphs 87 and 88. Applicants respectfully submit that Catan does not teach, suggest or disclose the invention as recited in independent claims 27 and 47 and specifically the recitations of at least one sensing element for monitoring environmental or asset operating and asset shipping conditions.

The Examiner referred to paragraph 62 of Catan to suggest sensing element for monitoring environmental or asset operating and asset shipping conditions. The Examiner further referred to MRL devices. Applicants respectfully stress that the referred paragraph of Catan does not disclose the specific limitation of sensing elements. The referred paragraph of Catan merely discusses a portable reader reading a MRL device attached to an article. The portable reader then transmits the stored data in the MRL device to a server. Nowhere in the referred paragraph or in the entire specification, Catan disclose sensing elements for monitoring environmental or asset operating and asset shipping conditions. Applicants refer the Examiner to paragraph 88 of present application, which describes various environmental or asset operating and shipping sensors as collision sensor, vibration sensor, tamper sensor etc. Since these kinds of sensors are not discussed by Catan, Catan can not anticipate the invention as recited in independent claims 27 and 47.

For at least these reasons, among others, Applicants respectfully request withdrawal of the rejections of claims 27 and 47 under 35 U.S.C. § 102. Claims 28-33, 36-39, 48-51, 55-59, 67 and 68 depend directly or indirectly from claims 27 and 47 are also clearly allowable at least

by virtue of their dependency from an allowable base claim.

35 USC §103

The Examiner rejected claim 34 under 35 USC §103(a), as being unpatentable over Catan, claims 35, 52-54 under 35 U.S.C 103(a) as being unpatentable over Catan in view of Ulrich et al. (U.S. Patent No. 6,344,794), claims 40, 41, 44, 46, 60, 61, 64 and 66 as being unpatentable over Catan in view of Katagishi et al. (U.S. Publication No. 2003/0120745), claims 42-43, 62-63 as being unpatentable over Catan in view of Katagishi and further in view of official notice and claims 45 and 65 as being unpatentable over Catan in view of Katagishi and further in view of Radican (U.S. Patent No. 6,148,291).

As discussed above, Catan fails to suggest or discuss sensing element for monitoring environmental or asset operating and asset shipping conditions as in independent claim 27 and 47 of the pending application. Further, Ulrich, Katagishi or Radican fails to suggest or discuss a the referred limitation. Thus, none of the cited references either taken alone or in any hypothetical combination, specifically disclose or suggest or teach the invention as recited in independent claims 27 and 47. Accordingly, Applicants respectfully submit that a prima facie case of obviousness cannot be established for independent claims 34, 35, 40-46, 52-54 and 60-66 depend directly from independent claims 27 and 47.

Accordingly, Applicants submits that the combination of the cited references would not render the subject matter of claims 27 and 47 and claims 34, 35, 40-46, 52-54 and 60-66 that depend therefrom, obvious. Applicants respectfully request that the Examiner withdraw the rejection under 35 USC 103.

Claim 34

Applicant respectfully traverses the rejection of claim 34 under 35 USC §103(a) as being unpatentable over Catan. In rejecting claim 34 under 35 U.S.C § 103, the Office Action contends:

Modification of this system to utilize a separate server computer system to control authentication and to use an LDAP directory system for facilitating user login is a matter of design choice and would have been obvious in light of the system disclosed by Catan, since LDAP director system was well known at the time of the invention, and provides the same login functionality taught by

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Catan reference.

This appears to be an apparent attempt to officially notice a fact. If the Office has intended to take Official Notice, such an attempt is traversed, at least because it is not in compliance with the Office's own procedures. Applicant respectfully traverses this attempted use of Official Notice as improper. Consequently, a necessary element of a prima facie case is absent.

Proper use of Official Notice requires compliance with several obligations expressly set forth in the *Manual of Patent Examining Procedure*. The Examiner has failed to meet these obligations. Specifically, the Office has failed to satisfy its obligations under *MPEP* § 2144.03. *MPEP* § 2144.03 (B), for example, expressly requires the Office to provide specific factual findings predicated on sound technical and scientific reasoning to support taking Official Notice. The *MPEP* goes on to explain that this means that the Examiner should present an Applicant with the explicit basis on which Official Notice is based so that the Applicant is able to challenge the assertion in the next reply after the Office action (*MPEP* §2144.03(B)). Naked assertions about what is allegedly known in the art, like those cited above, cannot satisfy these requirements.

In the event that the Office is not attempting to take Official Notice, Applicant respectfully requests confirmation of this fact.

Claim 42-43 and 62-63

Applicant respectfully traverses the rejection of claim 34 under 35 USC §103(a) as being unpatentable over Catan. In rejecting claim 34 under 35 U.S.C § 103, the Office Action contends:

However, the examiner takes official notice that it is notoriously old and well-known in the art to display information pertaining to the specific functional parameters associated with a given system. Catan already discloses the use of asset identification and intelligent sensing devices in conjunction with one another and their ability to monitor environmental or operating conditions, and Katagishi discloses the use of a mobile device such as a cell phone to interrogate such asset identification and intelligent sensing devices on items.

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The Examiner attempts to take Official Notice of matter that is not "capable of instant and unquestionable demonstration," as expressly required by section 2144.03(A) of the *MPEP*. Indeed, even assuming *arguendo* that the equivalence of the display information pertaining to the specific functional parameters is a fact, this fact would be neither of notorious character nor instantly and unquestionably demonstrable. Moreover, courts have long rejected the notion that official notice can be taken on the state of the art. In sum, the Examiner's attempts at Official Notice are improper and traversed.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 USC 103.

Summary

For the reasons set out above, Applicants respectfully submit that the application is in condition for allowance. Favorable reconsideration and allowance of the application are, therefore, respectfully requested.

If the Examiner believes that anything further is necessary to place the application in better condition for allowance, the Examiner is kindly asked to contact Applicants undersigned representative at the telephone number below.

Respectfully submitted,

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